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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Brian Sangster,

Plaintiff,

v.

Clark County Detention Center,
et al.,

Defendants.

2:06-CV-0195- JCM (PAL)

Date: N/A

Time: N/A

ORDER

Presently before the court is defendant Clark County Detention Center's motion for attorney's fees (#132), plaintiff's response in opposition (#135), and defendant's reply (#136).

A prevailing defendant is entitled to attorney's fees if the plaintiff's actions were frivolous, unreasonable or without foundation. The Supreme Court in *Chirstiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), held that meritless means groundless or without foundation, rather than simply that the plaintiff has ultimately lost his case. The Supreme Court applied these principles to the special case of pro se litigants in *Hughes v. Rowe*, 449 U.S. 5 (1980). In finding the award of attorney's fees under 42 U.S.C. § 1988 to be inappropriate, the Court held that "[a]n unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims." *Id.* at 15.

1 Plaintiff brought a claim against Clark County Detention Center under 42 U.S.C. § 1983
2 because he was denied surgery to treat his hernia. However, the court granted summary judgment
3 against the plaintiff (#129) because the surgery was elective and the plaintiff was receiving other
4 treatment for the condition. Subsequently, defendant Clark County Detention Center filed a motion
5 for attorney's fees (#132) under 42 U.S.C. § 1988.

6 Although the court ultimately dismissed plaintiff's underlying claim, it was not sufficiently
7 meritless to meet the standard set forth in *Christiansburg*. Plaintiff had a medical problem and
8 sought redress from the court. Although he failed in his claim, his actions were not frivolous or
9 unreasonable, especially when the court considers the plaintiff's pro se status, as directed by *Hughes*.
10 As such, attorney's fees are not appropriate in this case because the claims of the plaintiff were not
11 sufficiently meritless.

12 Having reviewed defendant's motion for attorney's fees (#132), plaintiff's opposition (#135),
13 and defendant's reply (#136), this court finds that defendant Clark County Detention Center is not
14 entitled to attorney's fees.

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's motion for
16 attorney's fees (#132) be, and the same hereby is, DENIED.

17 DATED this 28th day of February, 2007.

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20 UNITED STATES DISTRICT JUDGE
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